***THE HON'BLE Ms. JUSTICE G. ROHINI**

+WRIT PETITION NO.20733 OF 2002 & BATCH

% 14/08/2006

Karatam Narayana Rao ....
PETITIONER

AND

$ The Government of A.P.,
Rep., by Secretary, West Godavari District, Eluru and six others.
....RESPONDENTS

< Gist

> Head Note :

! Counsel for the petitioner : Sri M.R.K. Amarendra Kumar

^ Counsel for the respondents : Govt. Pleader for Social Welfare

Cases Referred :

[1] 2000 (2) ALD 365
2 2000 (4) ALD 443
3 2001 (6) ALT 226 (F.B.)
4 2002 (4) ALT 669 (D.B.)
5 1994 (2) An.W.R. 216
6 1999 (5) ALD 430

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.20733 OF 2002,
WRIT PETITION NO.22929 OF 2001,
WRIT PETITION NO.15197 OF 2002,
WRIT PETITION NO.11849 OF 2002,
AND
WRIT PETITION NO.9507 OF 2002

DATED: 14th AUGUST, 2006.

In W.P.No.20733 of 2002

Between:
Karatam Narayana Rao ....
PETITIONER

AND

The Government of A.P.,
Rep., by Secretary, West Godavari District, Eluru and six others.
....RESPONDENTS

In W.P.No.22929 of 2001

Between:
Gadde Raghunatharao ..... PETITIONER

AND

The Agent to Government,
West Godavari District, Eluru and six others.
....RESPONDENTS

In W.P.No.15197 of 2002

Between:
Karatam Surendranath Benarji ..... PETITIONER

AND

The Agent to Government/District Collector(TW),
West Godavari District, Eluru and six others.
....RESPONDENTS

IN W.P.No.11849 of 2002

Between:
Gandrothu Veera Raghavamma ... PETITIONER

AND

The Agent to Government/District Collector(TW),
West Godavari District, Eluru and six others. .. Respondents

AND

IN W.P.No.9507 of 2002

Between:

Karatam Surendranath Benarji ..... PETITIONER

AND

The Agent to Government/District Collector(TW),
West Godavari District, Eluru and two others.
....RESPONDENTS

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.20733 OF 2002,
WRIT PETITION NO.22929 OF 2001,
WRIT PETITION NO.15197 OF 2002,
WRIT PETITION NO.22929 OF 2001,
WRIT PETITION NO.11849 OF 2002,
AND
WRIT PETITION NO.9507 OF 2002

COMMON ORDER:

All these writ petitions, which arise out of the orders of ejection passed under the provisions of A.P. Scheduled Area Land Transfer Regulation, 1959 (for short "the Regulation 1 of 1959), involve common questions of fact and law. Hence, they are heard together and decided by this common order.

The lands, which are the subject-matter of this batch of writ

petitions, are admittedly situated in Buttaigudem village o f West Godavari District which is declared as an agency area attracting the provisions of Regulation 1 of 1959. The petitioners in all these writ petitions are non-tribals, who claim title and possession in respect of various extents of lands situated in different survey numbers of Buttaigudem village.

One Basha Venkanna and three others, who are arrayed as respondents 5 to 8 in all these writ petitions, filed W.P.No.7147 of 1997 seeking a declaration that the action of the respondents therein in not taking any steps for restoration of the lands situated in R.S.Nos.414/2, 416, 417/1, 418, 419 and 420 of Buttaigudem Village of West Godavari District as arbitrary and illegal. While claiming to be the members of a Scheduled Tribe, it was alleged that they were evicted forcibly from the above lands and though they made a representation, the officials failed to take any action for restoration of the lands in terms of the provisions of the Regulation 1 of 1959 read with Regulation 1 of 1970. The said writ petition was disposed of by this Court by order dated 10-04-1997 with a direction to the Special Deputy Collector, Tribal Welfare, Kota Ramachandrapuram, West Godavari District to dispose of the representation made by the petitioners therein, as expeditiously as possible, preferably within a period of four months after conducting necessary enquiry in accordance with law.

Pursuant thereto, the Special Deputy Collector (Tribal Welfare), Kota Ramachandrapuram, issued notices to the petitioners in W.P.No.20733 of 2002, W.P.No.22929 of 2001 and W.P.No.11849 of 2002 apart from one Karatam Lakshmi Kanthamma calling upon them to show-cause as to why they should not be evicted from the petition schedule lands.

In the schedule to the said notices, the land in question was described as Ac.40.00 of land out of Ac.80.00 covered by old Patta No.17 of Gallavarigudem village, which the respondents 5 to 8 herein claimed as their ancestral property and sought restoration alleging that

they were forcibly dispossessed. The respondents claimed that as per the survey and settlement operations conducted during the period from 1970 to 1977, old Patta No.17 correlates to the land situated in R.S.Nos. as under:

New RS.No.	Extent Ac-cts.
413	13.89
414/1	3.90
414/2	3.24
415	10.58
416	4.28
417/1	8.50
417/2	4.35
418	7.86
419	7.35
420	9.20
427/1	1.04
Total	74.19

The petitioners in W.P.Nos.20733 of 2002 (Karatam Narayana Rao), W.P.No.22929 of 2001 (Gadde Raghunadha Rao) and W.P.No.11849 of 2002 (Gandrothula Veera Raghavamma) submitted their detailed explanations denying the allegations made in the show-cause notices and stating that their possession was not in contravention of the provisions of the Regulation 1 of 1959. It was also pleaded that the proceedings initiated against them earlier under Section 3(2) of Regulation 1 of 1959 read with Regulation 1 of 1970 on the same allegations in respect of the same land were decided in their favour after due enquiry and therefore, fresh proceedings were unwarranted apart from being arbitrary and illegal.

Before going into further details, for proper appreciation of the controversy involved, it is necessary to note the facts in brief in each writ petition as under :

W.P.No.20733 of 2002 (Karatam Narayana Rao):

He claims title and possession in respect of Ac.4.65 cents in R.S.No.757, Ac.7.35 cents in R.S.No.419, Ac.4.20 cents in R.S.No.420, Ac.7.86 cents in R.S.No.418 and Ac.3.34 cents in

R.S.No.414/2 of Buttaigudem village. It is stated that an extent of Ac.40.00 forming part of old Patta No.17 was purchased by his grandfather by name Mareddi Sarvaryudu from a tribal by name Basha Muthi Gadu under Registered sale deed No.174/1933 after obtaining the permission from the Assistant Agent of Bhadrachalam vide proceedings dated 08.06.1932. Another extent of Ac.40.00 was also purchased by his grandfather from one Nissakula Venkanna, who was a non-tribal, under a Registered sale deed dated 16.05.1928. Out of the above lands, different extents situated in R.S.Nos.757, 419, 420, and 418 as mentioned above were allotted to the petitioner in the family partition and from the said date he continued in possession and enjoyment of the same. While so, the Special Deputy Tahsildar (TW), Kota Ramachandrapuram filed a complaint under Section 3 (2) (a) of Regulation 1 of 1959 complaining that the above said lands in possession and enjoyment of the petitioner, a non-tribal, who in contravention of Section 3(1) of Regulation 1 of 1959. In pursuance thereof, the Special Deputy Collector (TW) having registered a case being SR.No.262 of 1984 issued a show-cause notice, to which the petitioner submitted his explanation denying the allegations. After conducting due enquiry, the Special Deputy Collector (Tribal Welfare) held that the transactions under which the petitioner acquired the land were not hit by the provisions of Regulation 1 of 1959 as amended by Regulation 1 of 1970 and accordingly rejected the complaint made by the Special Deputy Tahsildar (TW). Since the said order dated 23-07-1990 became final, the petitioner contended that the fresh proceedings initiated in respect of the very same land were not maintainable.

W.P.No.22929 of 2001 (Gadde Raghunatharao):

He claims title and possession in respect of Ac.10.00 of land situated in R.S.No.415 and Ac.15.16 cents of land in R.S.Nos.416 and 417/1 of Gallavarigudem village, h/o Buttaigudem village. It is stated that the said Ac.10.00 of land in R.S.No.415 was purchased by him

(being minor represented by his mother Smt.Gadde Mangamma) on 01-09-1967 under an agreement of sale from Karatam Ramachandrarao, a non tribal. So far as Ac.15.16 cents of land situated in R.S.No.416 and 417/1 is concerned, it is stated that the same was purchased by his father under an agreement of sale dated 01-09-1967 from one Karatam Mohanarao, a non-tribal. Under the said agreements, they were put in possession and since then they have been continuing in possession and enjoyment of the land. While so, on a complaint made by the Special Deputy Tahsildar (TW) under the provisions of Regulation 1 of 1959 as amended by Regulation 1 of 1970, proceedings for eviction were initiated against his mother and father (Smt. Gadde Mangamma and Sri Gadde Satyanarayana) in S.R.No.17/89 and S.R.No.76/79 respectively under Section 3 (2) (a) of Regulation 1 of 1959. However, the said proceedings were disallowed by orders dated 01-07-1990 and 09-05-1980 respectively holding that their possession was not in contravention of the provisions of the Regulation 1 of 1959. The said orders became final and therefore, the Special Deputy Collector (TW) has no jurisdiction to make a fresh enquiry in respect of the very same lands.

It was also pleaded that on an application made by him under Section 9 of Regulation 2 of 1970 seeking grant of Ryotwari patta in respect of the above said lands, the Settlement Officer, Eluru, having conducted due enquiry, by order, dated 20-6-1986, granted patta in favour of the petitioner in respect of Ac.4-28 cents in RS.No.416 and Ac.8-50 cents in RS.No.417/1 of Buttaigudem village and the said order has become final.

W.P.No.11849 of 2002 (Gandrothula Veera Raghavamma):

She claims to be the owner of the land situated in R.S.No.414/2 to an extent of Ac.3.34 cents of Buttaigudem village. It is claimed that the said land was purchased by her grand father by name Mareddi Sarvarayudu from a non-tribal by name Nissakula Venkanna under a

registered document dated
16-05-1928 and during the family partition the same was allotted to her. It was also stated that on a complaint made by the Special Deputy Tahsildar (TW) Kota Ramachandrapuram, though eviction proceedings were initiated against her bother Karatam Narayanarao in S.R.No.262 of 1984 on the file of the Special Deputy Collector (TW) Kota Ramachandrapuram, the said proceedings were disallowed by order dated 23-07-1990. Subsequently, in pursuance of the order in W.P.No.7147 of 1997, when the proceedings were reopened, she was also served with a notice and her husband Gandrothula Veera Raghavulu appeared before the Special Deputy Collector and deposed that Ac.3-24 cents of land situated in RS.No.414/2 was given to his wife Gandrothula Veera Raghavamma as Pasupukumkuma at the time of marriage about 40 years ago. The said land originally belonged to Mareddi Sarvarayudu, maternal grandfather of Gandrothula Veera Raghavamma, having purchased the same under a Registered Sale Deed, dated 15-3-1928, from Nissakula Venkanna, a non-tribe. The said land was given to his daughter Karatam Lakshmi Kanthamma as Pasupukumkuma and in turn, the same land was given to Gandrothula Veera Raghavamma as Pasupukumkuma at the time of her marriage. Thus, it was pleaded that the land in possession of Gandrothula Veera Raghavamma originally belonged to a non-tribe and has nothing to do with the complainants Basha Pullaiah and Muthyalu.

From the above explanations, it is clear that the petitioners in all the said three writ petitions raised a specific objection that in view of the orders already passed by the Special Deputy Collector (TW), dropping the eviction proceedings initiated under Section 3 (2) (a) of Regulation 1 of 1959, reopening of the case in SR.No.262 of 1984 was per se bad in law and without jurisdiction.

The Special Deputy Collector (TW), though took note of the said objection, proceeded with the enquiry and recorded a finding on merits

that the writ petitioners did not acquire valid title in respect of the land in their possession since there was no material to establish the permission of the Assistant Agent to the Government, dated 8-6-1932. Accordingly, by order, dated 22-12-1997, S.R.No.262 of 1984 was allowed and the Mandal Revenue Officer, Buttaigudem was directed to take possession of the petition schedule land which was registered under Document No.174/1933 as per the boundaries noticed in the document and restore the same to the original transferor of the petition schedule land or to his legal heirs.

The petitioner in W.P.No.20733 of 2002 (Karatam Narayana Rao) along with her sister Gandrothula Veera Raghavamma (Petitioner in W.P.No.11849 of 2002) preferred an appeal being SRA.No.3/1998 before the Agent to the Government. The said appeal was dismissed by order dated 26-11-2001 and the Revision preferred by him before the Government was also dismissed vide G.O.Ms.No.111, Social Welfare (LTR.1) Department, dated 30-9-2002. Aggrieved by the same, he filed W.P.No.20733 of 2002.

Similarly, questioning the order of eviction in SR.No.262/84, the petitioner in W.P.No.22929 of 2001 (Gadde Raghunadha Rao) preferred SRA.No.4/1998 before the Agent to the Government. The said appeal was dismissed by order dated 20-10-2001. He did not prefer any further Revision, but filed W.P.No.22929 of 2001 challenging the order of the Special Deputy Collector, dated 22-12-1997 as confirmed in SRA.No.4/1998.

The petitioner in W.P.No.11849 of 2002 (Gandrothula Veera Raghavamma) who was one of the appellants in SRA.No.3/1998 alleged that pursuant to the dismissal of the said Appeal, the Mandal Revenue Officer was attempting to take possession of her land to an extent of Ac.3-34 cents situated in RS.No.414/2 which did not form part of 40 acres of land covered by Old Patta No.17, which was the subject-matter of the claim made by the respondents 5 to 8. Hence, she filed W.P.No.11849 of 2002 seeking a declaration that the order of

the Special Deputy Collector, dated 22-12-1997 in SR.No.262/84 as confirmed in SRA.No.3/1998 by the Agent to the Government as arbitrary and illegal.

W.P.Nos.9507 of 2002 and 15197 of 2002 (Karatam Surendranath Benarjee)

These two writ petitions are filed by one Karatam Surendranath Benarjee, S/o. Karatam Butchi Raju, who claims to be the owner and possessor of the land to an extent of 5.62 hectares in R.S.No.413, 1.5 hectares in RS.No. 414/1 and 0.42 hectares in R.S.No.427 of Gallavarigudem village, h/o. Buttaigudem. It is stated that his paternal grandmother Karatam Lakshmikanthamma was given an extent of Ac.40-00 cents of land in Gallavarigudem village as Pasupukumkuma by her father Mareddy Sarvarayudu, who purchased the said land under a Registered Sale Deed dated 4-5-1933 from a tribal Basha Muttigadu after obtaining the permission of the Assistant Agent to the Government, Bhadrachalam vide proceedings dated 8-6-1932. It is stated that another extent of Ac.16-00 cents was purchased by his grandmother Lakshmi Kanthamma under a Registered Sale Deed, dated 3-7-1929 from one Borra Subbaiah. During the family partition effected in the year 1957, the said land fell to the share of his father Karatam Butchi Raju. After the death of Karatam Butchi Raju, the petitioner succeeded to the said land.

On a complaint made by the Deputy Tahsildar (TW), K.R. Puram eviction proceedings were initiated during the lifetime of his father by the Special Deputy Collector (TW), K.R. Puram vide S.R.Nos.145/1985, 341/1985 and 343/1985 under Section 3 (2) (a) of Regulation 1 of 1959. However, after conducting due enquiry, the cases were dismissed by a common order dated 3-8-1990 and the said order became final.

That apart, in terms of the provisions of Regulation 2 of 1970 the Settlement Officer, Kovvur, W.G. District granted ryotwari patta in respect of the above said land vide proceedings dated 28-8-1997 in favour of his father Karatam Butchi Raju.

While so, having reopened the proceedings in SR.No.262/84 in respect of the land covered by old Patta No.17 of Buttaigudem village, the Special Deputy Collector (TW) passed an order of ejectment in respect of 40 acres of land out of 80 acres situated in Patta No.17. The petitioner (Karatam Surendranath Benarjee) was not a party to the said proceedings and no notice was issued to him at any point of time and as a matter of fact the lands in his possession did not form part of the 40 acres of land in respect of which ejectment was ordered. However, the Mandal Revenue Officer, Buttaigudem, in pursuance of the order of ejectment in SR.No.262/84, started interfering with the possession of the petitioner and attempted to evict him from the lands in his possession. In the circumstances, he filed W.P.No.9507 of 2002 seeking a declaration that the action of the respondents in trying to evict him from the lands in his occupation as arbitrary and illegal.

Pending the said writ petition, this Court granted interim stay of all further proceedings including eviction of the petitioner from the lands in question. However, it is alleged that he was dispossessed by the Mandal Revenue Officer under a panchanama. Hence, he filed W.P.No.15197 of 2002 contending that reopening of the case in SR.No.262/84 and passing an order of eviction without notice to him or his father Karatam Butchi Raju, is arbitrary and illegal. Accordingly, he sought a writ of certiorari to call for the records relating to the order dated 22-12-1997 in SR.No.262/84 on the file of the Special Deputy Collector (TW), K.R. Puram as well as the consequential proceedings and to quash the same being arbitrary and illegal.

Counter-affidavits have been filed by the Special Deputy Collector (TW), K.R. Puram on behalf of the official respondents contending that the purchase through Document No.174/33 from a hill tribe was void in the absence of the permission from the competent authority. The permission dated 8-6-1932 said to have been obtained from the Assistant Agent, Bhadrachalam was never produced in the

earlier proceedings for ejection and the orders dropping the said proceedings were obtained by the petitioners by fraud. Hence, as per the orders in W.P.No.7147 of 1997, the matter was enquired afresh after giving notice to both the parties and the order of ejection was rightly passed. The allegation that the Mandal Revenue Officer, Buttaigudem had taken possession of more than 40 acres without identifying the lands was denied and it is stated that the possession of 40 acres out of 80 acres was taken as per the boundaries noted in the Registered Document No.174/1933 and the same was handed over to the respondents 5 to 8 on 26-2-2002.

In the counter-affidavits filed on behalf of the respondents 5 to 8, it is stated that the lands in question said to have been acquired by the writ petitioners were originally held by Basha Pullaiah and Basha Muthyalu, who were hill-tribes. The transactions under which the petitioners said to have acquired title to the said lands were hit by the provision of Regulation 1 of 1959 as amended by Regulation 1 of 1970. Hence, being the legal heirs of Basha Pullaiah and Basha Muthyalu, they filed W.P.No.7147 of 1997 and after a detailed enquiry the Special Deputy Collector (TW), K.R. Puram passed order of ejection and the same was confirmed in Appeal and Revision. The orders said to have been passed under Regulation 1 of 1970 granting patta in favour of some of the petitioners are not binding on them since the same were granted by misleading the authorities and without notice to them. Since the transaction under which they acquired the land itself was null and void, while ordering ejectment the land in question was rightly directed to be restored to them.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioners Sri P.R.K. Amarendra Kumar primarily contended that the Special Deputy Collector (TW) has no jurisdiction to reopen the proceedings in SR.No.262/84 and to make a fresh enquiry which is nothing but review of the earlier orders

passed under Section 3 (2) (a) of Regulation 1 of 1959 in respect of the very same property. In support of the said submission, the learned Counsel for the petitioners relied upon the decisions of the Division Bench in DATLA NARASIMHA RAJU AND OTHERS vs. PRINCIPAL SECRETARY TO GOVERNMENT OF A.P. SPECIAL WELFARE DEPARTMENT AND OTHERS[1] and C. RAMALINGA RAJU v. DISTRICT COLLECTOR, ELURU, WEST GODAVARI DISTRICT[2].

The learned Government Pleader appearing for the respondents 1 to 4 contended that the principle of res judicata is not applicable since the parties to the earlier proceedings and the present proceedings are entirely different. The learned Government Pleader pointed out that whereas the earlier proceedings initiated suo motu ended in dismissal, fresh proceedings were initiated on a complaint made by the aggrieved tribals in compliance with the order of this Court in W.P.No.7147 of 1997.

The learned Counsel for the respondents 5 to 8, Sri V. Venugopala Rao, contended that the concurrent findings recorded by the respondents 1 to 3 are based on proper appreciation of the material on record and the same do not warrant any interference. The learned Counsel, while submitting that in pursuance of the impugned order of ejectment the possession of the land in question was already taken by the Mandal Revenue Officer, Buttaigudem and the same was handed over to the respondents 5 to 8 in the year 2002 itself, contended that since the earlier orders were obtained by the petitioners by playing fraud, the Special Deputy Tahsildar (TW) has inherent power to recall the earlier order even in the absence of specific power of review under Regulation 1 of 1959. In support of his contention, the learned Counsel has relied upon a decision of the Full Bench in DIGAMBAR RAO v. GOVT. OF A.P.[3].

Section 3 of Regulation 1 of 1959 runs as under :

3. Transfer of immovable property by a member of a

Scheduled Tribe :-- *(1) (a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.*

(b) Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe.

(c) … … .. ..

(2) (a) Where a transfer of immovable property is made in contravention of sub-sec. (1), the Agent, the Agency Divisional Officer or any other prescribed Officer, may on application by any one interested, or on information given in writing by a public servant, or suo motu decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transfer or his heirs.

(b) … … .. .. …"

On a reading of sub-section (2) of Section 3 of Regulation 1 of 1959, it is clear that the proceedings for ejectment can be initiated either on application by anyone interested or on information given in writing by a public servant or suo motu by the Agent or the Agency Divisional Officer or any other prescribed officer.

As noted above, the earlier proceedings of ejectment were initiated in respect of the land claimed by the petitioners under Section 3 (2) of Regulation 1 of 1959 on complaints/information given by the Special Deputy Tahsildar. In the complaints made by the Special Deputy Tahsildar (TW), it was alleged that the schedule mentioned

lands situated in an agency area, were in possession and enjoyment of non-tribals in contravention of sub-section (1) of Section 3 of Regulation 1 of 1959. In pursuance thereof, having issued a show-cause notice and having considered the explanations offered by the writ petitioners together with the evidence produced both oral and documentary, the Special Deputy Collector held that the cases were not hit by the provisions of Regulation 1 of 1959 as amended by the Regulation 1 of 1970.

Admittedly, the subsequent proceedings were initiated on a complaint made by the respondents 5 to 8 herein who are the tribals, claiming title to the lands in question in terms of the order in W.P.No.7147 of 1997. It is not in dispute that the respondents 5 to 8 were not parties to the earlier proceedings and they were not heard by the Special Deputy Collector before holding that the possession of the writ petitioners was not in contravention of the provisions of Regulation 1 of 1959.

In SPECIAL DEPUTY COLLECTOR (TRIBAL WELFARE) v. DATLA VENKAPATHI RAJU[4], having considered an identical issue, it was held by the Division Bench that where the issue that arose for decision in the earlier proceedings and in the fresh proceedings is different and where the parties to the proceedings are different, the fresh proceedings cannot held to be illegal. In the said decision, the Division Bench has also accepted the view expressed in G. RAGHAVULU vs. AGENT TO GOVERNMENT[5] that the principle of res judicata shall be applied with caution in dealing with a case arising under the Regulation meant for the protection of the tribes and if the proceedings were dropped earlier for the reason that the tribal could not produce sufficient evidence, it does not preclude a subsequent enquiry.

It is true that in C. RAMALINGA RAJU'S case (2 supra), it was held that in the absence of an enabling provision of review in

Regulation 1 of 1959, the Special Deputy Collector is not competent to initiate fresh proceedings for eviction. However, a perusal of the said decision shows that no ratio as such was laid down by the Division Bench, but in the particular facts and circumstances of the said case, wherein the fresh proceedings were initiated only on a letter addressed by the Mandal Revenue Officer stating that the earlier order rendered by the Special Deputy Collector (TW) was doubtful, the Division Bench held that the initiation of fresh proceedings was impermissible.

The facts in the present case are entirely different. As noted above, in the cases on hand, the fresh proceedings were initiated in terms of the order of this Court in W.P.No.7147 of 1997 on a complaint made by the respondents 5 to 8 herein who were admittedly not parties to the earlier proceedings. Hence, the reopening of the proceedings in SR.No.262/84 cannot be held to be review of the earlier orders which became final.

In the circumstances, I am unable to hold that the action of the Special Deputy Collector (TW) in reopening the proceedings on a complaint made by the respondents 5 to 8 herein in terms of the order of this Court in W.P.No.7147 of 1997 is either arbitrary or illegal.

However, the question is whether the 2nd respondent was justified in taking a contrary view than the one taken earlier while disallowing the proceedings initiated on a complaint made by the Special Deputy Tahsildar.

As noted above, it is always open to the competent authority to initiate fresh proceedings in respect of the very same land in case any fresh material is available and to arrive at an independent conclusion.

In the instant cases, the petitioners are claiming title through Mareddy Sarvarayudu, who purchased the land in question from a tribal by name Basha Muttigadu under Registered Sale Deed bearing Document No.174/1933. It was claimed that the said land was purchased after obtaining the permission from the Assistant Agent of

Bhadrachalam vide proceedings dated 8-6-1932. In the earlier orders, dated 23-7-1990, 1-7-1990 & 9-5-1990, the then Special Deputy Collector (TW), having considered the copy of the said sale deed as well as other relevant documents including the encumbrance certificate for the period from 1916 to 1947 and the encumbrance certificate for the period from 1916 to 1933 which reflected the sale transaction, concluded that the same were not hit by the provisions of Regulation 1 of 1959. The very same documents were produced by the petitioners in the subsequent proceedings initiated on a compliant made by the respondents 5 to 8 herein in terms of order in W.P.No.7147 of 1997. On behalf of the respondents 5 to 8, the respondent No.8 deposed as P.W.1 and seven (7) documents were marked to substantiate their claim. As per the deposition of P.W.1, their ancestors Basha Pullaiah @ Pulligadu and Basha Muthyalu @ Muttigadu are the Ijaradars under Old Patta No.17 to an extent of Ac.80-00 cents in Gallavarigudem village. It was alleged that out of the said Ac.80-00 cents an extent of Ac.40-00 cents was covered by the registered sale deed under Document No.174/1933, which was the subject-matter of the fresh proceedings initiated. The said claim was disputed by the respondents 5 to 8 contending that the petition schedule land was under the possession and enjoyment of Basha Pullaiah and Basha Muthyalu till the year 1941.

On the other hand, the writ petitioners contended that Mareddy Sarvarayudu purchased the said Ac.40-00 cents from Basha Muthyalu under the Registered Sale Deed dated 5-5-1933 after obtaining the permission of the Assistant Agent to the Government, Bhadrachalam vide proceedings No.692/1932, dated 8-6-1932 . The sale deed bearing Document No.174/1933 dated 5-5-1933 was produced on their behalf.

The version of the petitioners was disbelieved by the Special Deputy Collector on two grounds. Firstly, the copy of the permission dated 8-6-1932 was not produced and secondly whereas the sale

deed was registered in the year 1933, the vendors Basha Pullaiah and Muthyalu were in possession till the year 1938. The Special Deputy Collector also observed that the recitals in the sale deed revealed that as a matter of fact the land in question was mortgaged in the year 1928 in favour of Mareddy Sarvarayudu for five years without possession under Registered Mortgage Deed vide Document No.322/1928, however, even before the expiry of the said five years, the sale deed came to be executed. Even the permission was obtained from the Assistant Agent, Bhadrachalam in the year 1932, much before the expiry of the period of mortgage. Thus, though the registered sale deed contained a specific recital as to the permission granted by the Assistant Agent, Bhadrachalam dated 8-6-1932, the Special Deputy Collector (TW) disbelieved the same. The Special Deputy Collector also found that whereas the petitioner in W.P.No.22929 of 2001 claim to have purchased under a Registered Sale Deed, dated 19-8-1977, as a matter of fact, the lands were under the possession and enjoyment of Karatam Lakshmikanthamma as per the co-relation statement upto the year 1969. Thus, the Special Deputy Collector entertained a doubt as to the genuineness of sale deed bearing Document No.174 of 1933.

It is to be noted that prior to enactment of Regulation 1 of 1959, the Agency Tracts Interest and Land Transfer Act, 1917 was in force. As per Section 4 (1) of the said Act, any transfer of immoveable property situated within the agency tracts by a member of a hill-tribe shall be absolutely null and void unless made in favour of another member of a hill-tribe or ***with the previous consent in writing of the agent or of any other prescribed officer***.

Admittedly, the transaction in question took place prior to enactment of Regulation 1 of 1959. It is also not in dispute that the said transaction was between a hill-tribe and a non-tribe. Hence, the previous consent as required under Section 4 of the Agency Tracts Interest and Land Transfer Act, 1917 was mandatory. However, in the

earlier proceedings such permission said to have been granted by the Additional Agent to the Government, Bhadrachalam dated 8-6-1932 was not produced. Section 4 of the Agency Tracts Interest and Land Transfer Act, 1917 which was in force as on the date of the transaction in question made it clear that there was a statutory bar on any transfer of immoveable property situated within the agency tracts by a member of hill-tribe in favour of a non-tribal without the previous consent of the Agent or any other Prescribed Officer in writing. In the case on hand, it is not in dispute that the transaction covered by the Document No.174/1933 was between a hill-tribe and Mareddy Sarvarayudu, a non-tribe. Hence, the bar under Section 4 was applicable. Since admittedly the earlier orders were passed by the Special Deputy Collector (TW) under Section 3 (2) (1) of Regulation 1 of 1959 without examining the genuineness, much less existence of the previous consent of the Agent as required under Section 4, the mere fact that the earlier proceedings were dropped by itself would not come in the way of the statutory authority, exercising the power under sub-section (2) of Section 3 of the Regulation 1 of 1959, to arrive at a different conclusion, if, on the basis of the material available it is established that the transaction covered by Document No.174/1933 was not in accordance with Section 4 of the Agency Tracts Interest and Land Transfer Act, 1917.

The learned Counsel for the petitioners, while placing before this Court an endorsement dated 26-7-2001 made by the Revenue Divisional Officer, Kovvur contended that the entire file relating to Dis.No.692/32, dated 8-6-1932 was destroyed and therefore the certified copy of the said proceedings could not be obtained. Such plea as to non-availability of the copy of the previous consent granted by the Assistant Agent to Government, Bhadrachalam was never raised before the Special Deputy Collector (TW). At any rate, the order of ejectment, dated 26-11-2001 shows that apart from the non-production of any material to establish the so-called

permission/previous consent obtained from the Additional Agent to the Government in the year 1932, there were several other circumstances which weighed with the Special Deputy Collector (TW) to disbelieve the claim of the petitioners that the sale transaction in favour of their ancestor Mareddy Sarvarayudu was not hit by the provisions of the Regulation 1 of 1959.

The law is well settled that the burden is on the persons claiming possession to show that their possession is not in contravention of Section 3 (1) of the Regulation 1 of 1959. Since the petitioners failed to discharge the said burden of proof, the order of ejection passed by the primary authority as confirmed in the Appeal and Revision do not suffer from any infirmity. Hence, there is absolutely no justifiable reason to interfere with the concurrent findings recorded by the respondents 1 to 3 in exercise of the writ jurisdiction under Article 226 of the Constitution of India.

Even the fact that the Ryotwari pattas were granted in favour of some of the petitioners under Regulation 2 of 1970, in my opinion, is of no consequence. Section 3 (1) of Regulation 1 of 1959 as substituted by Regulation 1 of 1970 w.e.f. 3-2-1970 contains a non-obstante clause giving an overriding effect to the prohibition under Section 3 (1) (a) over any other enactment or law in force in the agency tracts. Regulation 2 of 1970 which enables a ryot in a scheduled area to which the said Regulation applies to obtain a Ryotwari patta in respect of the land in his holding has come into force w.e.f. 1-7-1971. The second proviso to Section 7 of Regulation 2 of 1970 requires that such possession shall not be void or illegal under Regulation 1 of 1959 as amended by Regulation 1 of 1970 or any other law. The proviso to Section 9 of Regulation 2 of 1970 further reiterates that the claim for a Ryotwari patta should not be void under any other law applicable to scheduled areas.

Having considered the scheme of Regulation 1 of 1959 as amended by Regulation 1 of 1970 vis-à-vis the provisions of

Regulation 2 of 1970, this Court in GADDE NAGABHUSHANAMMA vs. GOVT. OF A.P. AND OTHERS[6] held that the determination of invalidity declared under amended Regulation 1 of 1959 has overriding effect on any contrary determination under any other Regulation.

Thus, it is very clear that a person whose possession or occupation was void or illegal under Regulation 1 of 1959 cannot be granted a Ryotwari patta. In the circumstances, in view of the finding recorded above that the transaction covered by the Document No.174/1933 being in violation of Section 4 of the Agency Tracts Interest and Land Transfer Act, 1917 was illegal and void, the Ryotwari pattas automatically were rendered invalid.

For the aforesaid reasons, I do not find any substance in any of the contentions raised by the petitioners. The impugned order of ejectment as confirmed in Appeal and Revision is neither hit by the principles of res judicata nor can it be termed as without jurisdiction. Even on merits, as expressed above, the findings of fact do not suffer from any error apparent on the face of the record, warranting interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

Hence, all the Writ Petitions are dismissed. No costs.

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G. ROHINI, J.

Dt.14-8-2006

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THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION NO.20733 OF 2002,
WRIT PETITION NO.22929 OF 2001,
WRIT PETITION NO.15197 OF 2002,
WRIT PETITION NO.11849 OF 2002,
AND
WRIT PETITION NO.9507 OF 2002

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DATED: 14th AUGUST, 2006.

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[1] 2000 (2) ALD 365

[2] 2000 (4) ALD 443

[3] 2001 (6) ALT 226 (F.B.)

[4] 2002 (4) ALT 669 (D.B.)

[5] 1994 (2) An.W.R. 216

[6] 1999 (5) ALD 430